Supreme Court, U.S.
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No. 99-746

In The

Supreme Court of the United States

PETER LEHMAN,

Petitioner,

v.

STATE OF MAINE,

Respondent.

On Petition For A Writ Of Certiorari To The Maine Supreme Judicial Court Sitting As The Law Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Are the Fourth Amendment particularity requirement and First Amendment scrupulous exactitude standard violated by the issuance of warrants authorizing seizure and subsequent search of all computers and computer-related equipment in the defendant's home, office and automobile when the affidavits established probable cause to believe that the defendant was taking pornographic pictures of several different children with a digital camera at his home and office and storing those images on a computer, but did not identify the location of the images in the computer?

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, the State of Maine, respectfully requests that the Court deny the Petition for a writ of certiorari seeking review of the decision and judgment of the Maine Supreme Judicial Court, sitting as the Law Court ("Law Court"), issued on July 30, 1999, reproduced in the Appendix to the Petition for Writ of Certiorari ("Pet. App.") at 1-12, and reported in *State of Maine v. Peter Lehman*, 1999 ME 124, 736 A.2d 256.

STATEMENT OF THE CASE

The petitioner here, Peter Lehman, asks the Court to address the degree of particularity required by the Fourth Amendment when executing a search warrant upon a computer for evidence of child pornography which petitioner now concedes there was probable cause to believe would be found therein, asserting that this is an important issue which has divided the lower courts. However, the Court should deny the writ because the conflict alleged by petitioner between the Law Court's decision and the decisions of the lower federal courts cited by petitioner is illusory.

The parties generally agree that the material facts are undisputed except in a few significant particulars. With respect to the September 30, 1997 warrant, petitioner emphasizes that the warrant authorized search of the university's "entire" computer system. *Petition* 2 and 4. Petitioner does not mention that this aspect of the warrant was limited to a search of the portions of the system

to which petitioner would have had access to store information. *Pet. App.* 61. Similarly, petitioner does not assert that he had a reasonable expectation of privacy in the university's computer system, and does not mention that he conceded before the trial court that the university consented to a search of its computers for the evidence sought by the police. Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, at 72-73.

Petitioner also asserts that the police seized three computers and over 400 computer disks from his home that contained hundreds of files "which were irrelevant to the investigation." *Petition* 4. The warrant, however, *authorized* seizure of the computers and the disks to allow a search for information relevant to the investigation, i.e., images of child pornography. *Pet. App.* 62. The warrant also authorized the police to utilize the services of a computer expert to help search the computers and computer-related equipment for that relevant information. *Pet. App.* 63.

Petitioner further asserts that the "[p]olice seized hundreds of other irrelevant items, including: videotapes, magazines . . . compact discs of Bach Motets, Mozart Horn Concertos, and James Galway's Christmas Carols . . . " *Petition* 4. Petitioner does not mention that the videotapes and magazines had been seized under the plain view doctrine as contraband, because they were child pornography, bearing such sexually explicit titles as "Teenagers in Horny Action," and "Young Snatch." Superceding/Supplemental Search Warrant (and Supporting Affidavit) dated October 10, 1997, reproduced in the attached Respondent's Appendix ("Resp. App."). Respondent does not agree that possession of videotapes

and magazines depicting child pornography is "irrelevant" in a sexual exploitation of a minor investigation. Furthermore, petitioner does not mention that the musical compact discs identified above were seized from the second floor study in petitioner's house, the location of the computer on which the victims saw their pictures. Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, at 74. Many more musical compact discs in locations in the house not proximate to computers were not seized. *Id.*

Still further, petitioner asserts that only one computer-related item, a detached hard drive found in petitioner's basement, "contained any evidence of criminal activity," and that "at least 407 computer-related items . . . were totally irrelevant to the prosecution." *Petition* 5. On the contrary, while the prosecution represented to the trial court at the suppression hearing that the basis of the criminal charges later lodged against petitioner was evidence found on the detached hard drive in the basement, a significant amount of other computer-related items would have had relevance to the prosecution had this matter gone to trial, e.g., the digital camera used to take the sexually explicit photographs of the young girls whose statements were attached to the initial police affidavit as well as the computer monitor on which the girls saw their photographs. Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, at 76-77.

Most significantly, petitioner omits any discussion of the Superceding/Supplemental Search Warrant, and Affidavit in support thereof, dated October 10, 1997, which

authorized the police to search the computers and computer-related equipment seized during the execution of the initial warrant for "computer images of minors under 14 years of age . . . which are evidence of the offenses of Possession of Sexually Explicit Material and Sexual Exploitation of a Minor." *Resp. App.* 7. The affidavit in support of the second warrant sought authorization for the police to utilize the services of a medical expert to help determine the ages of the children observed in the previously-seized magazines, videotapes, and computer images. *Resp. App.* 12, 13.

With respect to the December 4, 1997 indictment of petitioner, petitioner alleges that "[o]nly 24 of the 54 sexual exploitation counts, however, involved minors whose images were sought on the warrant (and for which probable cause existed), while 30 of those counts were for sexual exploitation (digital images) of minors whose images were not identified on the warrant." *Petition* 5. Paragraph 4 of the September 30, 1997 warrant, however, authorized the police to search for computer files and digital images of minors, and the two named victims in counts 24-53 were minors. *Pet. App.* 62, 77-84. Furthermore, both of those victims were specifically named in paragraph 8 of the September 30, 1997 search warrant, and the affidavit in support of that warrant provided probable cause to believe that their digital images would be found somewhere in one or more of petitioner's computers. *Pet. App.* 62, 69. The named victim in counts 29-53 was also the named victim in the sexual abuse count (Count 55).

With respect to the motion to suppress, in addition to finding that the search warrant was supported by

probable cause and that the search was not overbroad, the trial court also found that petitioner had failed to make a sufficient preliminary showing to justify an evidentiary hearing [*Franks v. Delaware*, 438 U.S. 154 (1978)], and that the police had acted in good faith and were objectively reasonable in relying upon the warrant issued by the court. *Pet. App.* 17; Transcript of Hearing on Motion to Suppress, Docket No. CR-97-1874, at 33-36.

Finally, the Law Court, in its decision in this case, addressing the Fourth Amendment overbreadth argument, stated, "The police knew only that the images of the girls who Lehman allegedly sexually exploited were taken by a digital camera and downloaded on a computer. The description of the computer equipment to be seized was 'as specific as the circumstances and the nature of the activity under investigation permit[ted].' " *Pet. App.* 10 (*quoting Davis v. Gracey*, 111 F.3d 1472, 1478 (10th Cir. 1997)). Addressing the First Amendment "scrupulous exactitude" argument, the Law Court stated, "We reject Lehman's contention that the warrant was required to describe the items to be seized with 'scrupulous exactitude.' The warrant authorized the seizure of photographs and digital images because such items were evidence that Lehman sexually exploited minors – the police did not seize these items because of the content or ideas contained therein." *Pet. App.* 11.

REASONS FOR DENIAL OF THE WRIT

There is no compelling reason for this Court to review the Law Court's decision in this case. First,

contrary to the assertion of petitioner, the Maine court's decision is not in conflict with lower federal court Fourth Amendment particularity cases. Second, the Maine court's decision is consistent with this Court's Fourth Amendment particularity and First Amendment scrupulous exactitude jurisprudence. Third, because of the factual matrix of the case below, a decision by this Court on the issues raised by petitioner would be a mere advisory opinion.

I. THE MAINE DECISION DOES NOT CONFLICT WITH THE DECISIONS OF THE LOWER FEDERAL COURTS.

Petitioner's primary argument is that the Court should grant review because the decision below conflicts with three decisions from the Ninth and Tenth Circuits and the District Court for the Southern District of New York. *Petition* 9-10. A review of those decisions, however, reveals that one of the three decisions actually involves the scope of a subpoena, not the Fourth Amendment's search warrant particularity requirement; a second involves an assessment of the adequacy of probable cause supporting the scope of the search engaged in; and the third involves a search of computer files for child pornography when the warrant only authorized a search for drug information. Furthermore, petitioner acknowledges that the Law Court's decision is in harmony with (indeed, relied on) other decisions from the First, Ninth and Tenth Circuits. *Petition* 8.

In the first case relied upon by petitioner, *United States v. Carey*, 172 F.3d 1268 (10th Cir. 1999), a three judge

panel of the Tenth Circuit decided a case in which the police, in a drug investigation, had seized the defendant's computers with consent from the defendant. *Id.* at 1270. The computers were taken to the police station and a warrant was obtained to search the files on the computers, with the assistance of a computer expert, for records pertaining to illegal drug sales and distribution. *Id.* A subsequent search of the files on the hard drives revealed no evidence related to drugs. *Id.* at 1271. While searching for drug information on the computer, the detective opened a "JPG" file, i.e., an image file rather than a text file, which had a sexually suggestive title and discovered child pornography. *Id.* Rather than obtain a second warrant, the detective opened approximately one hundred additional JPG files with sexually suggestive titles. *Id.* In rejecting the government's proferred "plain view doctrine" justification for the search of the JPG files, the Tenth Circuit found that the detective, by his own admission, expected to find child pornography, not evidence pertaining to drug transactions, with each subsequent opening of a JPG file. *Id.* at 1273. Stating that it was judging this case only on its own facts, the court held that the items seized (the JPG files) were not authorized by the warrant, and because the images of child pornography were in closed files, they were not in plain view. *Id.* Implicit in the panel's decision (and explicit in the concurring opinion filed by Judge Baldock) was that the police would have been authorized to search all of the JPG files if the detective had truly expected to find evidence pertaining to drug trafficking, which was authorized by the warrant. *Id.* at 1276-77. Contrary to holding

that an intermediate step of sorting relevant from irrelevant files was constitutionally required, as asserted by petitioner (*Petition* 9), the court was merely describing an alternative approach used by some courts to deal with "intermingled documents." *Id.* at 1275 (*citing United States v. Tamura*, 694 F.2d 591, 595-96 (9th Cir. 1982)). While recognizing that the police and computer expert took some reasonable steps which are generally useful in avoiding searching files of the type not identified in the warrant, the court held that since the detective did not use the information gained from these steps to limit his search, his subsequent search of files that he did not expect would contain evidence of the type specified in the warrant was unconstitutional. *Id.* at 1276. In this case, unlike the situation in *Carey*, the warrant authorized the police to search petitioner's computer files for evidence of child pornography, evidence of child pornography was found in petitioner's computer equipment, and petitioner was convicted on the basis of that evidence.

In the next case relied upon by petitioner, *In re Grand Jury Investigation Concerning Solid State Devices, Inc. v. United States*, 130 F.3d 853 (9th Cir. 1997), the Ninth Circuit expressly stated that it was not reaching whether the warrant was sufficiently particular, as required by the Fourth Amendment, because it determined that the scope of the search engaged in by the police exceeded the showing of probable cause made by the government to support the search. *Id.* at 856. In this case, petitioner concedes that there was probable cause supporting the government's search of his computer equipment and files for certain images of child pornography. *Petition* 5, 7.

Moreover, the court in *Solid State Devices* was not holding that the government in that case was barred from searching the appellant's computers and computer systems; rather, the court only held that the warrant which authorized search of virtually *all* of appellant's records, not just those stored in computers, was too broad given the limited showing of probable cause in the affidavit justifying such a wide-scale search. *Solid State Devices*, 130 F.3d at 856-57. Indeed, the court admitted that the affidavit very likely would have supported a narrower, more carefully-defined search. *Id.* at 857. Since the court did not discuss the facts detailed in the affidavit, whether such a search would have included the appellant's computers and computer systems is only speculation. Additionally, the Ninth Circuit recognized that under certain circumstances even searches such as the type engaged in by the police in that case would be constitutional depending on the showing of probable cause made by the government. *Id.* at 856. Significantly, since the court was only reviewing appellant's motion for return of seized property, the court did not address whether the evidence obtained as a result of the unconstitutional search would be excluded from introduction at trial. *Id.* at 857 n.2.

In the third case relied upon by petitioner, *In re Grand Jury Subpoena Duces Tecum Dated November 15, 1993*, 846 F. Supp. 11 (S.D.N.Y. 1994), the federal District Court was merely interpreting the legitimate scope of a subpoena, not whether a search warrant was sufficiently particular under the Fourth Amendment to guide officer discretion during execution. *Id.* at 12-14. Indeed, the court expressly stated that it was not analyzing this issue under the Fourth Amendment. *Id.* at 13. A subpoena presumes that

a person can be trusted to turn over evidence of an incriminatory nature; a search warrant presumes that a person cannot be trusted to turn over evidence of an incriminatory nature. With respect to a subpoena for computers and computer files, the police can rely upon the target of the subpoena to perform procedures, such as a key word search, to narrow the search to relevant files only. With respect to a search warrant for computers and computer files, the police cannot rely upon the target of the warrant to perform such procedures because of the inherent danger that the information will be destroyed. Therefore, the warrant authorizes the police, as in petitioner's case, to perform those procedures themselves after seizing the hardware. *Pet. App.* 63; *Resp. App.* 1.

The case is also factually dissimilar from petitioner's case. In *In re Grand Jury Subpoena*, the government conceded to the trial court that the grand jury's subpoena demanded irrelevant documents, and that a simple procedure, i.e., a "key word search," could be employed to reveal documents which were relevant to the grand jury's investigation. *Id.* In petitioner's case, the government made no such concession, nor could it – the information in police possession revealed only that petitioner was storing digital images of child pornography on a computer. It did not reveal whether petitioner was storing that information on a hard drive or on a disk, or in what format on those electronic storage devices.

Petitioner concedes that the Law Court's decision is in harmony with other decisions from the First, Ninth and Tenth Circuits. In *United States v. Upham*, 168 F.3d 532 (1st Cir. 1999), *cert. denied*, 119 S.Ct. 2353 (Jun. 14, 1999), the First Circuit, in a very similar case involving a seizure

of the defendant's entire computer system and disks to search for images of child pornography stored in the computer, stated, "A sufficient chance of finding some needles in the computer haystack was established by the probable cause showing in the warrant application; and a search of a computer and co-located disks is not inherently more intrusive than the physical search of an entire house for a weapon or drugs." *Id.* at 535.

In *United States v. Lacy*, 119 F.3d 742 (9th Cir. 1997), *cert. denied*, 118 S.Ct. 1571 (1998), the Ninth Circuit, in another case involving a seizure of the defendant's entire computer system and disks to search for images of child pornography stored in the computer, rejected an argument similar to the one raised here by petitioner that a warrant which described the computer equipment to be seized in generic terms and subjected it to blanket seizure was insufficiently particular to withstand Fourth Amendment scrutiny. *Id.* at 746. The court found that the generic description was acceptable because, as in petitioner's case, the police, while aware that the defendant had downloaded child pornographic images onto his computer, did not know whether the images were stored on the defendant's hard drive or on one of his many computer disks. *Id.*

Significantly, the Ninth Circuit also distinguished its *United States v. Kow*, 58 F.3d 423 (9th Cir. 1995) decision, which petitioner relies upon in this Court (*Petition* 12) , in which the court had invalidated a search warrant authorizing seizure of all of the defendant's records, including his computer hardware and software. *Lacy*, 119 F.3d at 746. The court observed that, unlike the affidavit in *Kow*, the affidavit in the *Lacy* case established probable cause

to believe the defendant's entire computer system was likely to evidence criminal activity. *Id.* As previously mentioned, petitioner has conceded before this Court that the affidavit established probable cause to believe that images of the minors would be found in petitioner's computer files. *Petition* 5, 7.

In *Davis v. Gracey*, 111 F.3d 1472 (10th Cir. 1997), the Tenth Circuit, in yet another case involving a warrant authorizing seizure of computer equipment to search for evidence of obscene material in the computer, rejected the defendant's argument that the warrant was overbroad because it allowed seizure of all "equipment" pertaining to the distribution or display of unlawful pornographic material. *Id.* at 1479. The court stated that the defendant's computer constituted evidence which fell within the allowable category. *Id.* The court also held that the warrant's limitation authorizing seizure of only equipment pertaining to a specified criminal activity sufficiently narrowed the officers discretion. *Id.* In petitioner's case the Law Court did not have to address the scope of the term "equipment" as the *Davis* court did because the warrant specifically authorized seizure of petitioner's computer equipment. *Pet. App.* 62. Additionally, as in *Davis*, the warrant in petitioner's case stated that the computer equipment, and the other items to be seized, were "evidence of the commission or attempted commission of the crimes of Sexual Exploitation of a Minor, Title 17, Section 2922 [sic], and Possession of Sexually Explicit Materials, Title 17, Section 2924 [sic]." *Pet. App.* 63.

More significantly, the Tenth Circuit rejected the defendant's argument, similar to the argument raised by petitioner in this case, that even if the seizure of the

computer itself was lawful, the concurrent seizure of the contents of the computer was unlawful because of the presence of innocent materials contained inside the computer. *Davis*, 111 F.3d at 1479. The court held that not only was the entire computer, including its contents, subject to seizure as a "container" for the evidentiary material found inside the computer; it also constituted an "instrumentality" of the offense itself. *Id.* at 1480. "The seizure of a container is not invalidated by the probability that some part of its 'innocent' contents will be temporarily detained without independent probable cause." *Id.* The court noted that there were "obvious difficulties attendant in separating the contents of electronic storage from the computer hardware during the course of a search." *Id.* The *Davis* court did state that the police should obtain a warrant prior to a search of the stored files in a seized computer. *Id.* Such a warrant was obtained in petitioner's case. *Pet. App.* 62-63.

Under these circumstances, where petitioner has not cited a single decision that truly conflicts with the Law Court's treatment of the Fourth Amendment's particularity requirement as it pertains to computer files, this Court should not use this case to address the issue for the first time.

II. THE MAINE DECISION IS CONSISTENT WITH THIS COURT'S PRECEDENTS.

A. Fourth Amendment.

Petitioner does not, nor could he, assert that the Law Court misstated this Court's general law of Fourth Amendment particularity. In its decision the Law Court

stated, "A warrant must describe the property to be seized with such particularity that an executing officer will be able to identify it 'with certainty,' " and that "[t]he warrant can leave nothing to the discretion of the executing officer as to what is to be taken." *Pet. App.* 8 (*quoting State v. Pelletier*, 673 A.2d 1327, 1329 (Me. 1996)). *Pelletier* was actually citing this Court's decision in *Marron v. United States*, 275 U.S. 192, 196 (1927). Furthermore, the Law Court said, "[s]uch particularity discourages general searches and prevents the unauthorized seizure of property under the mistaken belief that it falls within the authorization of the warrant." *Pet. App.* 8 (*quoting State v. Sweatt*, 427 A.2d 940, 949 (Me. 1981)). The decision below, and *Sweatt* upon which it relies, are on all fours with *Coolidge v. New Hampshire*, 403 U.S. 443 (1971), which prohibits general exploratory rummaging through a person's things. *See also Andresen v. Maryland*, 427 U.S. 463 (1976).

Rather, petitioner is asserting that the Law Court decision is inconsistent with the "intermingled documents" approach adopted by the Ninth Circuit in *United States v. Tamura*, 694 F.2d 591 (9th Cir. 1982) (requiring further approval of magistrate for subsequent search of container including both documents specified in warrant and documents not specified in warrant), which this Court has never adopted and which is inconsistent with the approach adopted by a number of other circuits. *See, e.g., United States v. Hargus*, 128 F.3d 1358 (10th Cir. 1997) (seizure of container including both documents specified in warrant and documents not specified in warrant permissible), *cert. denied*, 523 U.S. 1079 (1998); *United States v. Schandl*, 947 F.2d 462 (11th Cir. 1991) (same), *cert. denied*, 504 U.S. 975 (1992); *United States v. Shilling*, 826 F.2d 1365

(4th Cir. 1987) (seizure criticized but allowed), *cert. denied*, 484 U.S. 1043 (1988), *overruled on other grounds*, 70 F.3d 113 (4th Cir. 1995); *United States v. Johnson*, 709 F.2d 515 (8th Cir. 1983). Indeed, the *Tamura* approach runs counter to this Court's precedents generally authorizing search of a container if there is probable cause to believe that the object of the search may be found therein. *See, e.g., Wyoming v. Houghton*, 119 S.Ct. 1297 (1999); *United States v. Ross*, 456 U.S. 798, 824 (1982).

Furthermore, petitioner would gain nothing if this Court should adopt the *Tamura* approach – the police below *did* obtain further approval from the magistrate after seizing petitioner's computer equipment. *Resp. App.* 1-7.

B. First Amendment.

With respect to First Amendment "scrupulous exactitude," petitioner concedes that this Court's decision in *Stanford v. Texas*, 379 U.S. 476 (1965), which established that standard, authorizes a less particular description for items presumptively protected by the First Amendment if the items are seized as evidence of a crime and not because of the ideas which they contain. *Petition* 14. The Law Court relied on that distinction in rendering its decision below, as have other courts. *Pet. App.* 11-12; *United States v. Stelten*, 867 F.2d 446 450-51 (8th Cir. 1989), *cert. denied*, 493 U.S. 828 (1989); *United States v. Layne*, 43 F.3d 127, 132-33 (5th Cir. 1995), *cert. denied*, 514 U.S. 1097 (1995); *United States v. Kufrovich*, 997 F. Supp. 246, 263 (D.Conn. 1997). Petitioner simply disagrees with the Law Court's distinction in this case.

III. THE FACTS OF THIS CASE STRONGLY SUGGEST THAT REVIEW BY THIS COURT IS UNWARRANTED.

Three facts strongly suggest that even if this Court were to review petitioner's case and decide the questions of law in petitioner's favor, the Court's decision would have no practical effect in petitioner's case. In essence, the Court would be issuing a mere advisory opinion.

First, the trial court expressly found that the "good faith" reliance by the police on the magistrate-issued warrant was objectively reasonable. *Pet. App.* 17. Petitioner does not challenge that finding before this Court. Thus, even if this Court should conclude that the Fourth Amendment had been violated, the exclusionary rule would not act as a bar to admission of the evidence seized in violation of the Fourth Amendment. *United States v. Leon*, 468 U.S. 897 (1984).

Second, petitioner entered a conditional guilty plea. *Petition* 6. Thus, there was no trial and none of the evidence whose "overbroad" seizure petitioner now complains about was ever admitted. *Shilling*, 826 F.2d at 1369 (no prejudice by overbroad execution of search warrant because the defendant pled guilty).

Third, even if items not covered by the September 30, 1997 warrant were seized (which respondent disputes), and even if the Court determines that the "good faith exception" should not apply for some reason, the remedy is not suppression of *all* of the items seized. Rather, the appropriate remedy is suppression of only those items which were not authorized by the warrant. *Id; See also Waller v. Georgia*, 467 U.S. 39, 44 n.3 (1984); *United States v.*

Hamie, 165 F.3d 80, 84 (1st Cir. 1999). Since the detached hard drive found in petitioner's basement, which provided the basis for the criminal charges in this case, was indisputably covered by the warrant (*Pet. App.* 62), any error in the seizure of items not found in the warrant would be harmless.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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RESPONDENT'S APPENDIX

STATE OF MAINE
CUMBERLAND, SS

DISTRICT COURT
DISTRICT NINE
DIVISION OF
SO. CUMBERLAND

SUPERSEDING/SUPPLEMENTAL SEARCH WARRANT

TO: *Any officer authorized by law to execute this Search Warrant:*

On the basis of affidavit(s) by Detective Steven Reece of the Portland Police Department, of which affidavit(s) are attached to the original hereof and made a part thereof to be filed in the District Court;

I am satisfied that there is probable cause to believe that there are grounds for the initial seizure of the below-described items, for the continued seizure of the below-described items and for the issuance of a search warrant, authorizing the search of the below-described items in a manner similar to that authorized by Judge Christine Foster on 09/30/97. Because I am satisfied that there was a probable cause for the issuance of a search warrant for a search of the following;

1. VCR tapes with the following titles: VCR tapes with the following titles: "Jamie Loves Jeff," "Sandra & Danielle Eval At IVC," "Catherine & Company Fairytales," "1001 Nights 0-4563," "One Night Only," "Melody in Love," "Intimate Moments – The French Woman," "Tender Cousins – Frank and I"

2. VCR tapes from the basement: VCR tapes from basement work area with the following titles:

"Seventeen – 8 Teenagers in Horny Action – Shaved Teenager – 10," "Seventeen – With 28 Hot Teenager Girls – Volume 7," "Campus Cuties – Motel 2 / East Lover / Dirty Prancing," "Hanky Panky," "Hanky Panky," "Nicki," "Pete's," "Nicki – Nicki and Life and Loves Of," "Nicki – Pom-pom," and one VCR tape with no label

3. Magazines in the basement work area: Magazines in basement work area – "Linda," "Pigalle," "Teenage Hookers," "Little Girls Together," "Young and Lonely," "Tots & Twats," "Nubbins," "Little Girl Runaways," "Playing(?)," "Pretty Girls," "She Got Her Cookies," "Hot Baby," "Co-Ed," "Young Snatch," "Young Yummy Pussy," magazine with title ripped off w/ nude woman on cover, "Baby Dolls," "Teenage Schoolgirls #42," "Teenage Schoolgirls #28," "Seventeen #46," "Seventeen #59," "Seventeen #51," "Teenage Sex #77," "Teenage Schoolgirls #39," "Seventeen #45," "Teenage Sex #82," "Sex Orgies #41," "Seventeen #47," "Anal Teeners," "Seventeen Teenagers #36," "Teenage Schoolgirls #44," "Triple X #8," "Seventeen Teenagers #38," "Schoolgirls #14," "Dirty Teens Volume 2," "Teenage Schoolgirls #41," "Teenage Schoolgirls #25," "Seventeen Teenagers #37," "Teenage Sex #68," "Teenage Schoolgirls #46," "Teenage Sex #64," "Teenage Sex #66," "Seventeen #60," "Teenage Hookers," "The Groupie," "Hot Pizza Girl," "Showcase Theater Presents: Sweet Little Sister, Pussy Burglar, School Daze," "Three Card Stud," "Sex Boat," "Eats," "Hot Young Sluts," "The Life and Loves of Nikki Charm," "Young and Lonely," "Three in a Tub," "Triples – The Pimp's Girls"

4. All computer equipment and computer related equipment, including, but not limited to laptops,

monitors, key boards, printers, mice, modems, hard drives, CD roms, photo scanners, computer discs, tapes, programs to run computers, and access data, manuals on operations of systems and programs, and materials stored therein/ thereon.

Now located at the Portland Police Department, 109 Middle Street, Portland, Maine; and previously seized from:

1. Peter Lehman, DOB 10/30/45

2. University of Southern Maine Sociology building and Maine Council on Economic Education building located at 120 Bedford Street, Portland, ME. The building is a 2 story, with white vinyl siding. The front entrance is to the left side of the building. There is a porch with a white storm door to the left of the door. On the trim is the number 120. The office of Mr. Peter Lehman is on the second floor.

3. University of Maine system network. This is the computer network system for the entire University of Maine. Including, but not limited to, the University of Southern Maine's computer center located at 96 Falmouth Street, Portland, Maine, which Peter Lehman would have been able to access and would have been able to store information.

4. 1993 Toyota Previa van, white in color, ME Registration #6188ZZ, VIN #JT3AC21S3P1016869, expiration date 09/30/97. The Department of Motor Vehicles has that plate listed to a Peter Lehman, DOB 10/30/45, of 452 South Street, Gorham, ME. Joint owner is listed as a Susan J. Olson.

5. 452 South Street, Gorham, ME 04038. Detective Robert Gaudette, known to me as a Gorham police detective, checked the Gorham tax records for that residence. It is described in tax records as 1 3/4 story residence with a 36'x26' main building and a 28'x24' garage. Det. Gaudette stated the residence color is a brownish/reddish stain. Theresa Peavey and Allison O'Leary stated that this home was brownish in color.

Pursuant to a search warrant issued by Judge Christine Foster. Based on the relationship between the 09/30/97 search warrant and the items/property requested to be searched pursuant to this search warrant, I further find and order as follows:

A. That law enforcement officers executing this search warrant and the 09/30/97 warrant (referenced herein), and those working at their direction/request, are hereby authorized to continue of the seizure of the property (described to be searched) beyond the ordinary ten (10) days to 12/08/97 and may have until 12/08/97 to return the inventory for the 09/30/97 search warrant and this search warrant.

B. That law enforcement officers executing this search warrant, and those working at their direction/request are authorized to continue of the seizure of the property and its search in either the daytime or nighttime.

C. That the description of property and evidence previously seized as described in affidavit(s) may be relocated from the Portland Police Department to such other facility as may assist in the execution of the search warrant.

YOU ARE HEREBY COMMANDED to continue the search in the manner described above the thing(s)/ item(s) described below for the property described below and, if the property is/are found, to seize such property and prepare a written inventory of the property seized.

Place(s)/Thing(s)/Item(s) to be Searched:

VCR tapes with the following titles: "Jamie Loves Jeff," "Sandra & Danielle Eval At IVC," "Catherine & Company Fairytales," "1001 Nights 0-4563," "One Night Only," "Melody in Love," "Intimate Moments – The French Woman," "Tender Cousins – Frank and I"

VCR tapes from basement work are with the following titles: "Seventeen – 8 Teenagers in Horny Action – Shaved Teenager – 10," "Seventeen – With 28 Hot Teenager Girls – Volume 7," "Campus Cuties – Motel 2/Easy Lover/Dirty Prancing," "Hanky Panky," "Hanky Panky," "Nicki," "Pete's," "Nicki – Nicki and Life and Loves Of," "Nicki – Pompom," and one VCR tape with no label

Magazines in basement work area – "Linda," "Pigalle," "Teenage Hookers," "Little Girls Together," "Young and Lonely," "Tots & Twats," "Nubbins," "Little Girl Runaways," "Playing(?)," "Pretty Girls," "She Got Her Cookies," "Hot Baby," "Co-Ed," "Young Snatch," "Young Yummy Pussy," magazine with title ripped off w/ nude woman on cover, "Baby Dolls," "Teenage Schoolgirls #42," "Teenage Schoolgirls #28," "Seventeen #46," "Seventeen #59," "Seventeen #51," "Teenage Sex #77," "Teenage Schoolgirls #39," "Seventeen #45," "Teenage Sex #82," "Sex Orgies #41," "Seventeen #47," "Anal Teeners,"

"Seventeen Teenagers #36," "Teenage Schoolgirls #44," "Triple X #8," "Seventeen Teenagers #38," "Seventeen Teenagers #39," "Teenage Sex #67," "Teenage Schoolgirls #38," "Schoolgirls #14," "Dirty Teens Volume 2," "Teenage Schoolgirls #41," "Teenage Schoolgirls #25," "Seventeen Teenagers #37," "Teenage Sex #68," "Teenage Schoolgirls #46," "Teenage Sex #64," "Teenage Sex #66", "Seventeen #60," "Teenage Hookers," "The Groupie," "Hot Pizza Girl," "Showcase Theater Presents: Sweet Little Sister, Pussy Burglar, School Daze," "Three Card Stud," "Sex Boat," "Eats," "Hot Young Sluts," "The Life and Loves of Nikki Charm," "Young and Lonely," "Three in a Tub," "Triples – The Pimp's Girls"

All computer equipment and computer related equipment, including, but not limited to laptops, monitors, keyboards, printers, mice, modems, hard drives, CD roms, photo scanners, computer discs, tapes, programs to run computers, and access data, manuals on operation of systems and programs;

All these items have previously been seized from Peter Lehman's residence at 452 South Street, Gorham, Maine; and his office at 120 Bedford Street, Portland, Maine; and the vehicle of Peter Lehman; and the person of Peter Lehman. These items are presently located at the Portland Police Department at 109 Middle Street, Portland, Maine.

Property or Articles to be Searched for:

There is probable cause to believe that the magazines, videos, computer equipment & related

equipment (described above) contain the following:

A. Photographs, video tapes, computer images of minors under 14 years of age, all of which are evidence of the offenses of Possession of Sexually Explicit Material and Sexual Exploitation of a Minor and which are seizable pursuant to Maine Rule of Criminal Procedure 41.

Name of Owner or Occupant of Place to be Searched, if known to affiant:

1. University of Southern Maine, main office located at 96 Falmouth St., Portland, Maine; also owning the building at 120 Bedford Street, Portland, Maine

2. Peter Lehman, DOB 10/30/45, owner of 1993 Toyota Previa, ME Reg. 6188ZZ, along with joint owner Susan J. Olson

3. Peter Lehman, DOB 10/30/45, owner of 452 South Street, Gorham, ME

DAYTIME WARRANT AND NIGHTTIME

This warrant shall be executed either in the DAYTIME or NIGHTTIME and shall be returned, together with a written inventory, within 10 days of the issuance hereof, to the SO CUMBERLAND Division of the NINTH District Court of the District Court of Maine.

Issued in the County of CUMBERLAND, State of Maine, this 10/10/97.

Time: 8:35

/s/ Christine Foster
State of Maine
District Court Judge

STATE OF MAINE
CUMBERLAND, SS

DISTRICT COURT
DISTRICT NINE
DIVISION OF
SO. CUMBERLAND

IN RE:	)	Supplemental Affidavit
SEARCH WARRANT	)	& Request For
Me.R.Crim.P.41	)	Supplemental Search
	)	Warrant

Affidavit of PPD Detective Steven Reece

TO ANY JUDGE OF THE DISTRICT COURT OR JUSTICE OF THE PEACE:

I, Detective Steven Reece, being duly sworn on oath, state as follows:

I. That probable cause exists to believe that located in the materials described as:

VCR tapes with the following titles: "Jamie Loves Jeff," "Sandra & Danielle Eval At IVC," "Catherine & Company Fairytales," "1001 Nights 0-4563," "One Night Only," "Melody in Love," "Intimate Moments – The French Woman," "Tender Cousins – Frank and I"

VCR tapes from basement work area with the following titles: "Seventeen – 8 Teenagers in Horny Action – Shaved Teenager – 10," "Seventeen – With 28 Hot Teenager Girls – Volume 7," "Campus Cuties – Motel 2 / Easy Lover / Dirty Prancing," "Hanky Panky," "Hanky Panky," "Nicki," "Pete's," "Nicki – Nicki and Life and Loves Of," "Nicki – Pompom," and one VCR tape with no label

Magazines in basement work area – "Linda," "Pigalle," "Teenage Hookers," "Little Girls Together," "Young and Lonely," "Tots & Twats," "Nubbins," "Little Girl Runaways," "Playing(?)," "Pretty Girls," "She

Got Her Cookies," "Hot Baby," "Co-Ed," "Young Snatch," "Young Yummy Pussy," magazine with title ripped off w/ nude woman on cover, "Baby Dolls," "Teenage Schc olgirls #42," "Teenage Schoolgirls #28," "Seventeen #46," "Seventeen #59," "Seventeen #51," "Teenage Sex #77," "Teenage Schoolgirls #39," "Seventeen #45," "Teenage Sex #82," "Sex Orgies #41," "Seventeen #47," "Anal Teeners," "Seventeen Teenagers #36," "Teenage Schoolgirls #44," "Triple X #8," "Seventeen Teenagers #38," "Seventeen Teenagers #39," "Teenage Sex #67," "Teenage Schoolgirls #38," "Schoolgirls #14," "Dirty Teens Volume 2," "Teenage Schoolgirls #41," "Teenage Schoolgirls #25," "Seventeen Teenagers #37," "Teenage Sex #68," "Teenage Schoolgirls #46," "Teenage Sex #64," "Teenage Sex #66", "Seventeen #60," "Teenage Hookers," "The Groupie," "Hot Pizza Girl," "Showcase Theater Presents: Sweet Little Sister, Pussy Burglar, School Daze," "Three Card Stud," "Sex Boat," "Eats," "Hot Young Sluts," "The Life and Loves of Nikki Charm," "Young and Lonely," "Three in a Tub," "Triples – The Pimp's Girls"

All computer equipment and computer related equipment, including, but not limited to laptops, monitors, keyboards, printers, mice, modems, hard drives, CD roms, photo scanners, computer discs, tapes, programs to run computers, and access data, manuals on operation of systems and programs, and materials stored therein/thereon.

All as removed from Peter Lehman's residence at 452 South Street, Gorham, Maine; and his office at 120 Bedford Street, Portland, Maine; and the vehicle of Peter Lehman; and the person of Peter Lehman presently located at the Portland Police Department at 109 Middle Street, Portland, Maine.

II. Photographs, video tapes, computer images of sexually explicit conduct involving minors

All of which are evidence of the offenses of Possession of Sexually Explicit Conduct and Sexual Exploitation of Minors and which are seizable pursuant to Maine Rule of Criminal Procedure 41.

III. The facts and circumstances which lead me to believe this are as follows:

A. I, Detective Steven Reece, have been assigned to investigate allegations against Peter Lehman of 452 South Street, Gorham, Maine.

1. A search warrant affidavit of Detective Steven Reece dated 09/30/97 made in support of a search warrant dated 09/30/97 issued by Judge Christine Foster.

2. A search warrant issued by Judge Christine Foster of District Court dated 09/30/97.

All of the above documents are attached hereto and incorporated therein by reference.

B. On or about 10/01/97, I, Detective Steven Reece, along with members of the Portland Police Department and the Gorham Police Department executed a search warrant on the residence of Peter Lehman, 452 South Street, Gorham, Maine; the 1993 Toyota Previa van, owned by Peter Lehman; 120 Bedford Street, Portland, Maine, the office of Peter Lehman, owned by the University of Southern Maine; and the person of Peter Lehman himself. The search warrant was issued by Judge Christine Foster on 09/30/97. While conducting the searches, magazines and video tapes in plain view with the following titles:

VCR tapes with the following titles: "Jamie Loves Jeff," "Sandra & Danielle Eval At IVC," "Catherine & Company Fairytales," "1001 Nights 0-4563," "One Night Only," "Melody in Love," "Intimate Moments – The French Woman," "Tender Cousins – Frank and I"

VCR tapes from basement work area with the following titles: "Seventeen – 8 Teenagers in Horny Action – Shaved Teenager – 10," "Seventeen – With 28 Hot Teenager Girls – Volume 7," "Campus Cuties – Motel 2 / Easy Lover / Dirty Prancing," "Hanky Panky," "Hanky Panky," "Nicki," "Pete's," "Nicki – Nicki and Life and Loves Of," "Nicki – Pompom," and one VCR tape with no label

Magazines in basement work area – "Linda," "Pigalle," "Teenage Hookers," "Little Girls Together," "Young and Lonely," "Tots & Twats," "Nubbins," "Little Girl Runaways," "Playing(?)," "Pretty Girls," "She Got Her Cookies," "Hot Baby," "Co-Ed," "Young Snatch," "Young Yummy Pussy," magazine with title ripped off w/ nude woman on cover, "Baby Dolls," "Teenage Schoolgirls #42," "Teenage Schoolgirls #28," "Seventeen #46," "Seventeen #59," "Seventeen #51," "Teenage Sex #77," "Teenage Schoolgirls #39," "Seventeen #45," "Teenage Sex #82," "Sex Orgies #41," "Seventeen #47," "Anal Teeners," "Seventeen Teenagers #36," "Teenage Schoolgirls #44," "Triple X #8," "Seventeen Teenagers #38," "Seventeen Teenagers #39," "Teenage Sex #67," "Teenage Schoolgirls #38," "Schoolgirls #14," "Dirty Teens Volume 2," "Teenage Schoolgirls #41," "Teenage Schoolgirls #25," "Seventeen Teenagers #37," "Teenage Sex #68," "Teenage Schoolgirls #46," "Teenage Sex #64," "Teenage

Sex #66", "Seventeen #60," "Teenage Hookers," "The Groupie," "Hot Pizza Girl," "Showcase Theater Presents: Sweet Little Sister, Pussy Burglar, School Daze," "Three Card Stud," "Sex Boat," "Eats," "Hot Young Sluts," "The Life and Loves of Nikki Charm," "Young and Lonely," "Three in a Tub," "Triples – The Pimp's Girls"

Believing this to be potential evidence of the crime of Possession of Explicit Materials, it was seized.

C. In conclusion, your affiant, Detective Steven Reece, requests that the numerous video tapes, magazines and computer images seized pursuant to the search warrant of 09/30/97 be searched for sexually explicit depictions of minors under 14 years of age, in the same manner, and permit law enforcement officers to utilize the assistance of a medical expert versed in age determinations based on developmental characteristics. Because the computer equipment and numerous discs are already in possession of the Portland Police Department and no longer at the places searched, and in light of the enormity of the task confronting officers and the court and the execution of this warrant and in its time consuming nature, your affiant requests the following:

1. That this search warrant authorize the continuation of the seizure of property seized pursuant to the 09/30/97 search warrant and this warrant beyond the ordinary 10 days to 12/08/97, and that the inventories from the 09/30/97 search warrant and this warrant need not be returned before 12/08/97.

2. That this search warrant authorize the continuation of the seizure of the property in its search in either daytime and the nighttime.

3. That the magazines, videos, computer images, computer equipment and computer related equipment may be relocated from the Portland Police Department to such other facility as may assist in the execution of this search warrant.

4. That the search warrant be executed with the assistance of a medical expert versed in age determinations based on developmental characteristics.

WHEREFORE, I, Detective Steven Reece, your affiant, pray that a warrant may be issued authorizing the continued seizure and search of video tapes, magazines, computer images, computer equipment and other computer related equipment as described herein, and continued search of materials seized pursuant to the 09/30/97 search warrant issued by Judge Christine Foster.

I, Detective Steven Reece, do hereby swear under oath that the information set forth in this affidavit is true and correct to the best of my knowledge, information and belief.

Date: 10/10/97

/s/ Det. Steven A. Reece
Detective Steven Reece

Personally appeared before the above named, Steven A. Reece, and gave oath that the statements contained herein attributable to him are true when based on knowledge and belief, he believes them to be true.

/s/ Christine Foster
Maine District Court Judge or
Maine Justice of the Peace

Date: 10/10/97